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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

July 11, 2002

**NOTICE OF EX PARTE  
COMMUNICATION**

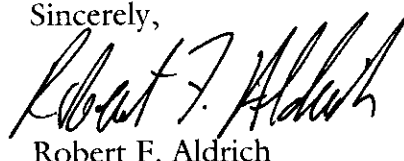
Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, DC 20554

**Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128; Colorado Payphone Association Petition for Reconsideration re Retroactive Adjustment of Second Report and Order Period Compensation; Retroactive Adjustment of Interim Compensation**

Dear Ms. Dortch:

On July 11, 2002, Albert H. Kramer and Robert F. Aldrich, attorneys for the American Public Communications Council ("APCC"), had a meeting with Associate General Counsel Linda Kinney and Joel Marcus of the Office of the General Counsel. The matters discussed are detailed in the enclosed documents, which were handed out at the meeting as part of a notebook of prior APCC ex parte filings. The graphs include updated information on the monthly payments of Intermediate Period compensation, which was submitted today in a separate ex parte letter.

Sincerely,



Robert F. Aldrich

Enclosures

cc: Linda Kinney  
Joel Marcus

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**GUIDE TO ISSUES IN RETROACTIVE PAYPHONE COMPENSATION****I. COMMISSION HAS DISCRETION REGARDING WHETHER AND HOW TO DO A TRUE-UP FOR EACH PERIOD****A. The Standard for Ordering a True-Up is Equity**

- Standards for Granting Retroactive True-Ups, Ex Parte Letter to William F. Caton, Acting Secretary, FCC, from Albert H. Kramer and Robert F. Aldrich at 3-5 (April 15, 2002). Tab 3.
- Retroactive Adjustments of Compensation, Ex Parte Letter to Dorothy Attwood, Chief, FCC, from Albert H. Kramer and Robert F. Aldrich at 1-2 (April 23, 2001). Tab 4.

**B. The Court in *Illinois Public Telecommunications Association v. FCC* and *MCI Telecommunications Corp. v. FCC* Did Not Require a True-Up for Either the Interim or Intermediate Periods**

- FCC's Discretion Concerning Interim Period True-Up, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar (July 10, 2002). Tab 5.
- Standards for Granting Retroactive True-Ups, Ex Parte Letter to William F. Caton, Acting Secretary, FCC, from Albert H. Kramer and Robert F. Aldrich at 3-5 (April 15, 2002). Tab 3.

**C. The Commission Can Resolve The True-Up Issue Differently for Differently Affected Groups of PSPs**

- Different Treatment of LECs and Independent PSPs, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar (July 10, 2002). Tab 6.
- Retroactive Adjustments of Compensation, Ex Parte Letter to Dorothy Attwood, Chief, FCC, from Albert H. Kramer and Robert F. Aldrich at 4-6 (April 23, 2001). Tab 4.

**II. INDEPENDENT PSPs SHOULD NOT BE SUBJECT TO A TRUE-UP FOR THE INTERMEDIATE OR INTERIM PERIODS**

**A. A True-Up Is Not Necessary to Prevent Unjust Enrichment of Independent PSPs or to Make IXCs Whole**

- 1. The IXC industry undercompensated the PSP industry more than \$80 million (more than \$135 million with interest) in the Early Period (1992 – 96) an amount that far exceeds any possible refund to IXCs.**
  - Early Period Compensation, Ex Parte Letter to William F. Caton, Acting Secretary, FCC, Letter from Albert H. Kramer and Robert F. Aldrich at 5-9 (April 15, 2002). Tab 7.
- 2. No IXC has overpaid the independent PSPs—each of the major IXCs undercompensated independent PSPs for the Early Period by an amount greater than the maximum total refund the IXC would receive**
  - Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 10 (May 23, 2002). Tab 8.
- 3. Even without regard to the Early Period, the independent PSPs have been undercompensated, not overcompensated, for the Interim and Intermediate Periods combined**
  - Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 10 (May 23, 2002). Tab 8.
- 4. Independent PSPs did not recover the costs of their marginal payphones in the Intermediate Period**
  - Retroactive Adjustment of Interim Compensation, Ex Parte Letter to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, from Albert H. Kramer and Robert F. Aldrich (March 26, 2001). Tab 9.
- 5. The IXCs, including AT&T, have already recovered their payments from end users – the IXCs are not committed to passing refunds through to end users, and in any event, the end users that actually paid the higher rates will not receive refunds**
  - Standards for Granting Retroactive True-Ups, Ex Parte Letter to William F. Caton, Acting Secretary, FCC, from Albert H. Kramer and Robert F. Aldrich at 9-12 (April 15, 2002). Tab 3.

**B. Subjecting Independent PSPs to a True-Up Inappropriately Forces Them to Bear an Unreasonable Risk of Loss**

- 1. In the true-up currently planned, independent PSPs would be owed millions of dollars by IXC's currently at risk of bankruptcy, and would owe millions of dollars to AT&T**
  - Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 10 (May 23, 2002). Tab 8.
  - APCC's Petition for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand, 10-14 (April 3, 2002). Tab 10.
  - Reply of the American Public Communications Council to Comments on Petitions for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 5-6 (May 13, 2002). Tab 11.
- 2. As independent PSPs have not been unjustly enriched, they should not be forced to pay Paul with money taken from Peter – especially when the chances of collecting from Peter are so uncertain.**
  - Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 10 (May 23, 2002). Tab 8.
  - APCC's Petition for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand, 10-14 (April 3, 2002). Tab 10.
  - Reply of the American Public Communications Council to Comments on Petitions for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 5-6 (May 13, 2002). Tab 11.

**C. Other equitable factors support excluding independent PSPs from the Intermediate Period refund requirement**

**1. Even AT&T, the only IXC to have overcompensated in the Interim Period, undercompensated independent PSPs if all three periods are considered simultaneously**

- Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 9 (May 23, 2002). Tab 8.

**2. Involving independent PSPs in a true-up will create an administrative nightmare and unfairly force independent PSP to bear the burden of errors.**

- Standards for Granting Retroactive True-Ups, Ex Parte Letter to William F. Caton, Acting Secretary, FCC, from Albert H. Kramer and Robert F. Aldrich at 3-5 (April 15, 2002). Tab 3.

**III. IF INDEPENDENT PSPS ARE INCLUDED IN A TRUE-UP, WHETHER FOR THE INTERIM PERIOD ALONE OR FOR BOTH THE INTERIM AND INTERMEDIATE PERIODS, THE FOLLOWING PRINCIPLES SHOULD APPLY:**

**A. The Commission should not require PSPs to act as intermediaries in transferring compensation payments from one IXC to another**

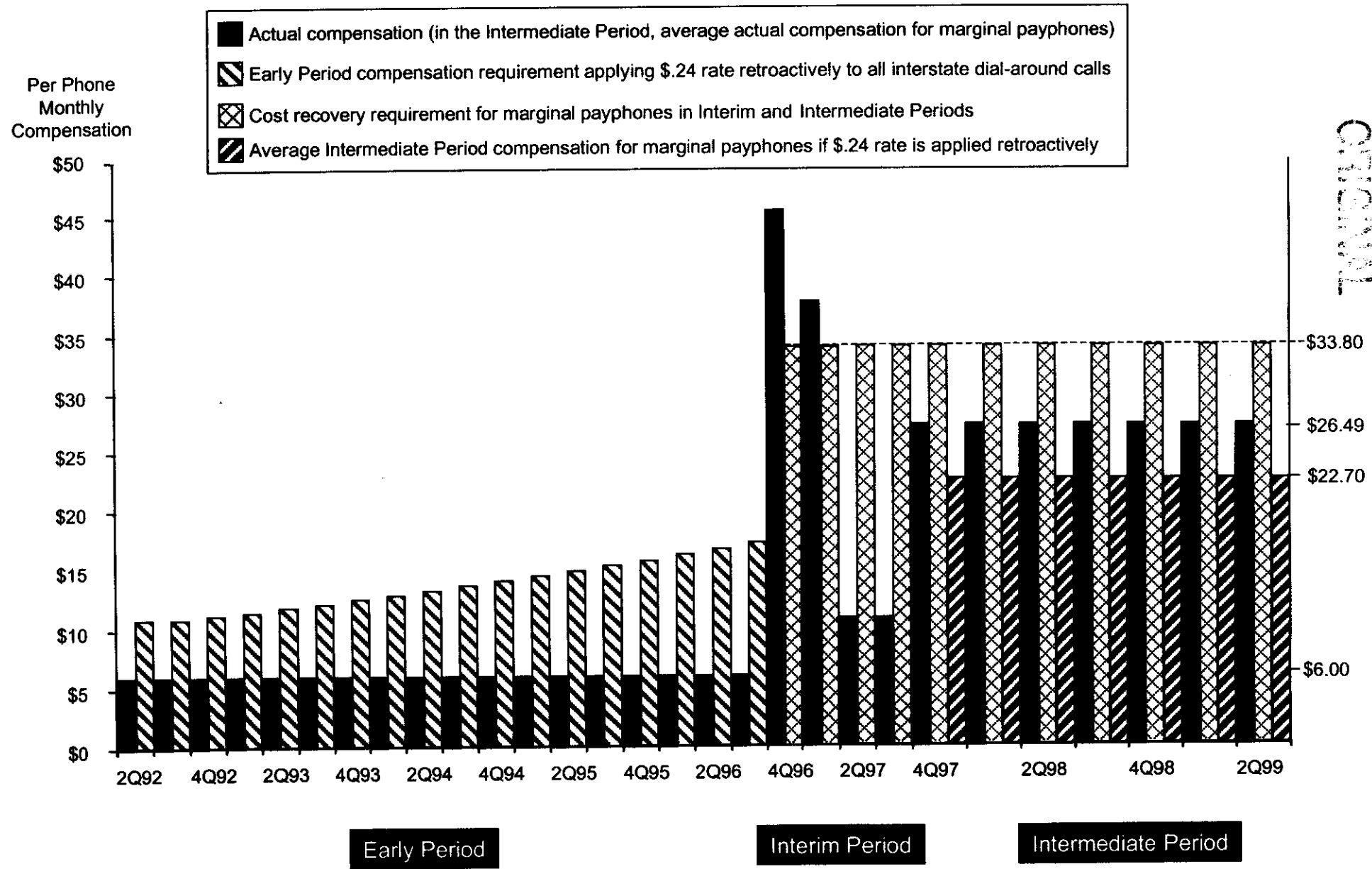
- APCC's Petition for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 10-14 (April 3, 2002). Tab 10.
- Reply of the American Public Communications Council to Comments on Petitions for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 5-6 (May 13, 2002). Tab 11.
- Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 7 (May 23, 2002). Tab 8.

**B. The Commission should not permit IXC takebacks**

- APCC's Petition for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 16-18 (April 3, 2002). Tab 10.
- Reply of the American Public Communications Council to Comments on Petitions for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 6-8 (May 13, 2002). Tab 11.



# Independent PSP Compensation 1992-1999



# Independent PSP Compensation 1992-1999

